

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 19-cr-0274 (WMW/DTS)

Plaintiff,

ORDER

v.

John Edward Juneau,

Defendant.

This matter is before the Court on Defendant John Edward Juneau's motion for a continuance or to call a defense witness out of order. (Dkt. 135.) Plaintiff United States of America opposes Juneau's request to call a defense witness out of order but does not oppose Juneau's alternative request to continue the trial.

Trial in this matter is scheduled to begin on Wednesday, April 6, 2022. Juneau contends that his rebuttal DNA expert witness, Dr. Krista Latham, is under subpoena to testify in another trial on Monday, April 11, 2022. For this reason, Juneau seeks an order continuing the trial in this case. Juneau was indicted in October 2019 and has been in pretrial detention since November 2019. And Juneau's trial has been continued on five previous occasions. Moreover, the record is not clear as to whether Juneau personally consents to waiving his speedy trial rights to accommodate a sixth trial continuance. For all of these reasons, Juneau's motion for a continuance of the trial is denied.

Juneau seeks, in the alternative, an order permitting him to call Dr. Latham to testify out of order on Friday, April 8, 2022, in the event that the United States has not

rested its case before then. The United States opposes this request. According to the United States, calling Dr. Latham to testify before the United States has rested its case would confuse the jury. Because Dr. Latham is a rebuttal expert witness, the United States maintains, she cannot provide rebuttal testimony about DNA evidence until *after* the United States has presented its DNA expert witness and evidence.

The Court has insufficient information at this time to determine whether the jury would be confused if Dr. Latham were permitted to testify on Friday, April 8, 2022. It is possible that the United States will rest its case before then, in which case this dispute will be moot. Even if the United States has not rested its case by then, it is possible that the United States will have finished presenting its DNA expert witness and evidence, in which case Dr. Latham's rebuttal testimony is not likely to confuse the jury. Moreover, if Dr. Latham is not able to testify by Friday, April 8, 2022, without confusing the jury, other solutions are available that would permit Juneau to present his defense without continuing the trial, such as a limited mid-trial recess until Dr. Latham is next available. For these reasons, Juneau's alternative motion for permission to call Dr. Latham to testify out of order is denied without prejudice. If necessary, Juneau may renew his motion during the trial when the Court has sufficient information to properly evaluate the scope of the dispute and all possible solutions.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein,
IT IS HEREBY ORDERED:

1. Defendant John Edward Juneau's motion for a continuance, (Dkt. 135), is **DENIED**.

2. Defendant John Edward Juneau's alternative motion to call a defense witness out of order, (Dkt. 135), is **DENIED WITHOUT PREJUDICE**.

3. The parties are directed to meet and confer before the start of trial as to the following issues:

- a. to determine whether the United States will stipulate to presenting its DNA expert witness and evidence early enough to permit Juneau to present the testimony of Dr. Latham on Friday, April 8, 2022, without confusing the jury;
- b. to prepare a jointly proposed cautionary jury instruction to be used *if* the Court permits Dr. Latham to testify out of order, to reduce any risk of jury confusion; and
- c. to determine the earliest possible alternative dates on which Dr. Latham could testify after her April 11, 2022 subpoena obligation ends.

4. No later than 12:00 p.m. on Tuesday, April 5, 2022, the parties shall file on ECF a joint letter updating the Court as to the status of the foregoing meet-and-confer topics.

Dated: April 1, 2022

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge